BORA LASKIN LAW LIBRARY
3 1761 04855 0313

Materials for

CITIZENSHIP THEORY AND IMMIGRATION LAW (262HF)

2000/2001

VOLUME 1

Professor Ayelet Shachar
Faculty of Law
University of Toronto

The Materials reproduced herein are solely for the educational use of students at the University of Toronto and are not for commercial sale or use

BORA LASKIN LAW LIBRARY
AUG 22 2000
FACULTY OF LAW
UNIVERSITY OF TORONTO

Materials for

CITIZENSHIP THEORY AND IMMIGRATION LAW (262HF)

2000/2001

VOLUME 1

Professor Ayelet Shachar
Faculty of Law
University of Toronto

The Materials reproduced herein are solely for the educational use of students at the University of Toronto and are not for commercial sale or use

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/materialsforciti01shac

CITIZENSHIP THEORY & IMMIGRATION LAW (262HF)

Professor Ayelet Shachar
Fall 2000
Three credits; two hours
Class: Monday 4:10 – 6:00
Office: Falconer Hall, Room 310; Phone: 978-1620
E-mail: ayelet.shachar@utoronto.ca

The course will consider key policy issues of Canadian immigration law in the context of major political, economic and technological developments in the last quarter of the 20th century. These developments pose challenges to traditional understandings of state sovereignty and hence, to traditional understandings of citizenship. Through a critical examination of the *jus soli* and *jus sanguinis* principles, we will address the two following issues: first, who are and who are not but should be state citizens; second, what are and should be the effects of citizenship status upon individuals' entitlements to civic, political, economic and social rights. In examining these issues, we will consider the general principles, conditions and terms under which persons may be admitted to membership in a polity, along with the specific admissible membership categories established by the *Immigration Act*. Special attention will be given to the objective of reuniting families, the refugee class, and the promotion of Canada's economic, social and demographic goals as cornerstones of Canadian immigration policy. We will also explore the recent wave of changes in Canadian, American, and Western European countries' immigration laws in light of the increasing intermingling of people, skills, and cultural identities across borderlines. In this context, we will discuss two apparently contradictory trends: the solidification of supranational regimes such as NAFTA and the EU, on the one hand, and the rise of "localism" and claims for regional or cultural autonomy, on the other. We will analyze the effect of these two trends on contemporary attempts by theorists and legislators alike to rethink the concept of citizenship and re-examine long-standing propositions in immigration law.

Evaluation:

- Class participation (10%): Class meetings will be organized around a discussion of a given week's reading. Class participation includes attendance, substantive participation in weekly discussions, and an in-class presentation of your comment paper (see below).

- One four-page comment papers (15%): The comment paper will be short critical essay integrating the sources on the reading list for that class. Comment papers are due at 4 p.m. on the day before the readings is scheduled to be discussed. Each student is expected to use the four-page comment paper to illuminate an important question in the reading or to develop their own coherent argument based on the readings. Students must sign up for the oral presentations of their comment papers ahead of time, during the second meeting of the seminar.

- A final (approx. 20-25 page) research paper (75%): The final paper's topic must be pre-approved by the instructor. The final paper is due by 4 p.m., December 21, 2000.

Required Texts:

A course packet is available for purchase at the University of Toronto Faculty of Law Bookstore.

VOLUME 1

I. CITIZENSHIP THEORY

1) Introduction

Objectives and design of the course.

Course requirements.

"Borders: Good fences," *The Economist*, December 19, 1998. 1

Stephen Handelman, "Two Nations, Indivisible: A new political relationship is starting to be forged between Canada and the U.S., based on regional supereconomies," *Time Magazine*, July 10, 2000. 6

2) Borders and Social Closure

Required reading:

Baker v. Canada [1999] 2 S.C.R. 817. 11

W. Rogers Brubaker, "Citizenship as Social Closure" in *Citizenship and Nationhood in France and Germany* (Cambridge, MA: Harvard University Press, 1992), chap. 1. 23

Catherine Dauvergne, "Beyond Justice: The Consequences of Liberalism for Immigration Law" Vol. 10 *Canadian Journal of Law and Jurisprudence* 323 (1997). 32

Recommended reading:

T. Alexander Aleinikoff, "The Tightening Circle of Membership" Vol. 22 *Hastings Constitutional Law Quarterly* 915 (1995).

II. INTERNATIONAL MIGRATION

3) Globalization; International Migration Trends; National Immigration Control

Required reading:

Wayne A. Cornelius et al., "The Ambivalent Quest for Immigration Control" in *Controlling Immigration* eds. Wayne A. Cornelius et. al. (Stanford: Stanford University Press, 1992) pp. 3-41. 48

Louis Michael Seidman, "Fear and Loathing at the Border" in *Justice in Immigration*, pp. 136-146. 68

Yasmin Nuhoglu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago, 1994) pp. 1-8. 74

Saskia Sassen, "Immigration Tests the New Order" in *Losing Control? Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1996) chap. 3. 79

Recommended reading:

Gary Freeman, "The Decline of Sovereignty? Politics and Immigration Restriction in Liberal States" in *Challenge to the Nation-State* ed. Christian Joppke (Oxford: Oxford University Press, 1998), chap. 3.

Dani Rodrik, *Has Globalization Gone Too Far?* (Washington, DC: Institute for International Economics, 1997), pp. 1-28, 69-85.

III. MEMBERSHIP MODELS

4) Birthright Citizenship: *Jus Soli* and *Jus Sanguinis*

Required reading:

Section 3, *Citizenship Act, 1985.* 100

Report of the Standing Committee on Citizenship and Immigration, *Canadian Citizenship: A Sense of Belonging* (Ottawa: Canada Communication Group 1994), pp. 17-21. 101

Benner v. Canada [1997] 1 S.C.R. 358. 104

Committee on Feminism and International Law, International Law Association, *Women's Equality and Nationality in International Law* (Taipai: Preliminary Report, May 1998). 130

Recommended reading:

Ann Dummett and Andrew Nicol, *Subjects, Citizens, Aliens and Others: Nationality and Immigration Law* (London: Weidenfeld and Nicolson, 1990) pp. 81-91.

5) Alternative Conceptions of Citizenship

A. Consensual citizenship

Required reading:

Peter H. Shuck and Rogers M. Smith, "Consensual Citizenship" *Chronicles* 21 (July 1992). 151

Recommended reading:

Gerald L. Newman, "Back to *Dred Scott*" Vol. 24 *San Diego Law Review* 485 (1987).

B. Ethnocultural citizenship

Required reading:

Kay Hailbronner, "Citizenship and Nationhood in Germany" in *Immigration and the Politics of Citizenship in Europe and North America* ed. W. Rogers Brubaker (Lanham, MD: University Press of America, 1989), chap. 3. 156

Germany Information Center, "Citizenship Reform and Germany's Foreign Residents" http://www.germany-info.org/content/np_3c.html 163

Recommended reading:

Ayelet Shachar, "Whose Republic: Citizenship and Membership in the Israeli Polity" Vol. 13 *Georgetown Immigration Law Journal* 233 (1999).

C. Supranational citizenship

Required reading:

J.H.H. Weiler, "To Be A European Citizen: Eros and Civilization" in *The Constitution of Europe: 'Do the new clothes have an emperor?' and others essays on European Integration* (Cambridge: Cambridge University Press, 1999), pp. 324-357. 168

Marco Martiniello, "Citizenship of the European Union" in *From Migrants to Citizens: Membership in a Changing World*, ed. T. Alexander Aleinikoff and Douglas Klusmeyer (Washington D.C.: Brookings Institution Press, 2000), pp. 342-380. 185

Recommended reading:

Rainer Bauböck, "Citizenship and National Identities in the European Union" *Harvard Jean Monnet Working Paper* 4/97.

Rey Koslowski, "European Union Migration Regimes: Established and Emergent" in *Challenge to the Nation-State*, chap. 5.

IV. CANADIAN IMMIGRATION POLICY

6) Historical Background; A Critical Evaluation of the Exclusionary History of Canadian Immigration Law; The American Historical Experience

A. Historical background

Required reading:

Manuel Gracia y Griego, "Canada: Flexibility and Control in Immigration and Refugee Policy" in *Controlling Immigration*, pp. 119-140. 205

Recommended reading:

Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 1998), pp. 352-381.

Gerald E. Dirks, *Controversy and Complexity: Canadian Immigration Policy during the 1980s* (Montreal & Kingston: McGill-Queen's University Press, 1995), pp. 3-44.

B. Critical historical evaluation of the exclusionary patterns of Canadian immigration law

Required reading:

Donald Galloway, *Immigration Law* (Concord: Irwin Law, 1997), pp. 3-23. 217

Recommended reading:

Bruce Ryder, "Racism and the Constitution: The Constitutional Fate of British Columbian Anti-Asian Immigration Legislation, 1884-1909" Vol. 29 *Osgoode Hall Law Journal* 619 (1991).

Irving Abella and Harold Troper, *None is Too Many: Canada and the Jews of Europe, 1933-1948* (3rd ed., Toronto: Lester Publishing, 1991).

C. Related problems: The American historical experience

Required reading:

Ian F. Haney Lopez, *White By Law: The Legal Construction of Race* (New York: New York University Press, 1996) pp. 37-46. 228

Recommended reading:

Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT: Yale University Press, 1997) pp. 13-39.

Virginia Sapiro, "Women, Citizenship, and Nationality: Immigration and Naturalization Policies in the United States" Vol. 30 *Politics and Society* 1 (1984).

VOLUME 2

7) Sources and Objectives of Canadian Immigration Law

Required reading:

A. Constitutional sources

Section 91 (25), *The Constitution Act, 1867:* Naturalization and Aliens. 234

Section 95, *The Constitution Act,* 1867: Concurrent Powers over Immigration. 235

B. Proposed legislation

The Immigration and Refugee Protection Act (Bill C-31), introduced April 6, 2000. 236

"Key Concerns respecting Bill C-31, *Immigration and Refugee Protection Act*," *Canadian Bar Association, National Citizenship and Immigration Law Section* (May 3, 2000). 253

C. Legislation-in-force

The Immigration Act, 1976. 258

The Immigration Regulations.

The Annual Immigration Plan. 302

D. Federal-Provincial Agreement on Immigration Regulation: The Case of Quebec

Scott A. Hanna, "Shared Powers: The Effects of Shared Canadian Federal and Quebec Provincial Immigration Powers on Immigrants" Vol. 9 *Georgetown Immigration Law Journal* 75 (1995). 319

V. ADMISSION TO CANADA; IMMIGRANT CATEGORIES

8) General Requirements; Family Reunification

A. General requirements

Required reading:

Donald Galloway, *Immigration Law*, pp. 123-141. 342

B. Family reunification

Required reading:

Davies B.N. Bagambiire, *Canadian Immigration and Refugee Law* (Aurora: Canada Law Book, 1996), pp. 15-33. 352

C. Defining "family" and "spouse"

Required reading:

Section 12, *Immigration and Refugee Protection Act* [proposed legislation]. 362

Legislative Review Advisory Group, "Executive Summary", *Not Just Numbers: A Canadian Framework for Future Immigration* (1998) p. 3. 368

Dan v. Canada (2000), 4 Imm. L.R. (3d) 252, Docket: IMM-5182-99, decision given on March 6, 2000. 384

McIntosh, "Defining 'Family' – A Comment on the Family Reunification Provisions in the Immigration Act" Vol. 3 *Journal of Law and Social Policy* 104 (1988). 386

Recommended reading:

Philip L. Bryden, "Fundamental Justice and Family Class Immigration: The Example of Pangli v. Minister of Employment and Immigration" Vol. 41 *University of Toronto Law Journal* 484 (1991).

D. Marriage of convenience

Required reading:

Horbas v. Canada [1985] 2 F.C. 359 (T.D.). 392

E. Domestic violence

Required reading:

Susan McDonald, "Not in the Numbers: Domestic Violence and Immigrant Women," Vol. 19 *Canadian Woman Studies* 163 (1999). 398

Michelle Anderson, "A License to Abuse: The Impact of Conditional Status on Female Immigrants" Vol. 102 *Yale Law Journal* 1401 (1993). 403

Recommended reading:

The American perspective: *The Immigration Marriage Fraud Amendments of 1986.*

Linda Kelly, "Domestic Violence Survivors: Surviving the Beatings of 1996" Vol. 11 *Georgetown Immigration Law Journal* 303 (1997).

9) Economic Class (Independent Applicants); The Business Immigration Program

A. Independent Applicants

Required reading:

Section 11, *Immigration and Refugee Protection Act* [proposed legislation]. See 362

Citizenship and Immigration Canada, "Guide for Independent Applicants," July 1999, http://cicnet.ci.gc.ca/english/immigr/guide-ce.html 418

Donald Galloway, *Immigration Law*, pp. 153-170. 434

Recommended reading:

Anne Dobson-Mack, "Independent Immigrant Selection Criteria and Equality Rights: Discretion, Discrimination and Due Process" Vol. 34 *Cahiers de Droit* 549 (1993).

B. The Live-In Caregiver Program

Required reading:

Audrey Macklin, "Foreign Domestic Workers: Surrogate Housewife or Mail Order Servant?" Vol. 37 *McGill Law Review* 681 (1992). 444

Recommended reading:

Lisa Marie Jakubowski, *Immigration and the Legalization of Racism* (Halifax: Fernwood Publishing, 1997), pp. 46-62.

10) Convention Refugees and Protected Persons

Required reading:

Singh v. Canada [1985] 1 S.C.R. 177. 486

Ward v. Canada (1993) 20 Imm. L. R. (2d) 85 (S.C.C.). 516

Howard Adelman, "Canadian Refugee Policy in the Postwar Period: An Analysis" in *Refugee Policy: Canada and the United States*, ed. Howard Adelman (Toronto: York University, 1991). 541

Pamela Foster, "The Gender Guidelines: From Margins to the Center?" Vol. 19 *Canadian Woman Studies* 45 (1999). 566

Recommended reading:

Gerald E. Dirks, "Canada's Refugee Policy: A Conundrum" in *Controversy and Complexity*, pp. 60-96.

Mattie L. Stevens, "Recognizing Gender-Specific Persecution: A Proposal to add Gender as a Sixth Refugee Category" Vol. 3 *Cornell Journal of Law and Public Policy* 179 (1993).

11) Naturalization; Removal and Deportation

A. Naturalization

Required reading:

Re Leung [1996] F.C.J. No. 1040 (T.D.). 572

W. Rogers Brubaker, "Citizenship and Naturalization: Policies and Politics" in *Immigration and the Politics of Citizenship in Europe and North America*, chap. 5. 575

Report of the Standing Committee on Citizenship and Immigration, *Canadian Citizenship: A Sense of Belonging*, pp. 4-13. 590

B. Removal and Deportation

Required reading:

Gomez v. Canada [1998] I.A.D.D. No. 1329 No. V97-01833. 597

Suresh v. Canada [2000] 2 F.C. 592 (C.A.). 609

Chiarelli v. Canada [1992] 1 S.C.R. 711. 614

Recommended reading:

Russel P. Cohen, "Fundamental (In)Justice: The Deportation of Long-Term Residents from Canada" Vol. 32 *Osgoode Hall Law Journal* 457 (1994).

VI. THE CITIZENSHIP DEBATE REVISITED

12) Borders, Immigration, and Social Justice

Required reading:

Salman Rushdie, "Good Advice is Rarer Than Rubies," in *East, West: Stories* (New York: Vintage International, 1994), pp. 5-16. 632

Joseph H. Carens, "Aliens and Citizen: The Case for Open Borders" Vol. 49 *Review of Politics* 251 (1987). 640

Recommended reading:

Gillian K. Hadfield, "Just Borders: Normative Economics and Immigration Law," in *Justice in Immigration*, ed. Warren F. Schwartz (Cambridge: Cambridge University Press, 1995) pp. 201-211.

Jules L. Coleman and Sarah K. Harding, " Citizenship, the Demands of Justice, and the Moral Relevance of Political Borders" in *Justice in Immigration*, pp. 18-62.

Owen Fiss, *A Community of Equals*: *The Constitutional Protection of New Americans* (Boston: Beacon Press, 1999), pp. 3-21.